



## News & Updates

### NEW CLARIFICATION ON CALCULATING FUTURE WRONGFUL DEATH DAMAGES: A STEP-BY-STEP GUIDE

New York's highest court recently clarified how to determine future damages in a wrongful death lawsuit. In *Toledo v. Iglesia Ni Cristo*, 2012 N.Y. Slip. Op. 00089 (Jan. 10, 2012), a case involving the death of a worker in a construction accident, the New York Court of Appeals affirmed the trial court's acceptance of the plaintiff's proposed judgment in the amount of \$4,295,595.

To help simplify the often confusing and daunting task of computing future wrongful death damages, we have summarized the court's decision in the following step-by-step guide:

**Step One** requires parties to rely on CPLR 5041, which in *Toledo* required the reduction of the jury's award of future damages by the lump sum amount of \$250,000.

**Step Two** requires that the sum achieved in step one should then be discounted at a rate identified by economic testimony, in this case 4.33 percent, to the date of the decedent's death. CPLR 5041 indicates that percentage used in the discount should be determined by applying the discount rate in effect at the time of the award.

**Step Three** requires that parties using the figure determined in step two should then calculate interest on the discounted amount at the statutory interest rate of 9 percent (CPLR 5004) from the date of death to the date of the verdict.

**Step Four** requires that the parties add the figure derived in steps two and three to determine the actual amount that should be included in proposed judgments related to the calculation of future wrongful death damages.

### Reasoning Behind the Court's Decision

In support of this ruling, the Court of Appeals cited to the long history of rulings in New York State where damages in a wrongful death case include prejudgment interest and the date from which the prejudgment interest accrues is the date of death. The court also pointed out that the interest is not to be construed as a penalty against defendants as the fundamental concept of "interest" is to allow for the plaintiffs to receive compensation for not being able use money that was owed to them.

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